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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

Human rights and terrorism

Note by the Secretary-General

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Introduction

1. In its resolution 1997/42 of 11 April 1997 entitled "Human rights and terrorism", the Commission on Human Rights requested the Secretary-General to continue to collect information on the implications of terrorism and of the fight against terrorism on the full enjoyment of human rights from all relevant sources and to make it available to the special rapporteurs and working groups concerned and the Commission on Human Rights for their consideration.

2. The Secretary-General, by a note verbale dated 5 August 1997, drew the attention of all Member States, competent specialized agencies and intergovernmental and non-governmental organizations to Commission on Human Rights resolution 1997/42. The present document contains summaries of the replies received. All replies have been made available in full to the special rapporteurs and working groups. The full texts of the replies are available for consultation with the secretariat.

3. The Office of the Under-Secretary-General for Humanitarian Affairs, the Economic Commission for Latin America and the Caribbean and the International Court of Justice replied that they were unable to provide information on this question. The Inter-Agency Affairs Section of the Office of the Under-Secretary-General for Economic and Social Affairs proposed amendments to the text of resolution 1997/42.

4. The attention of the Commission is drawn to the General Assembly resolution entitled "Human rights and terrorism" in which the Assembly requests the Secretary-General to seek the views of Member States on the implications of terrorism for the full enjoyment of all human rights and fundamental freedoms and to submit a report on the subject to it at its fifty-fourth session, and requests him to continue to seek the views of Member States on the possible establishment of a voluntary fund for the victims of terrorism, as well as ways and means to rehabilitate the victims of terrorism and reintegrate them into society.

5. The Commission's attention is also drawn to resolution 1997/39 dated 28 August 1997 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and to the working paper submitted by Mrs. Kalliopi K. Koufa (E/CN.4/Sub.2/1997/28). In paragraph 9 of the above-mentioned resolution, the Sub-Commission recommends that the Commission on Human Rights authorize the appointment of Mrs. Koufa as Special Rapporteur to conduct a comprehensive study on terrorism and human rights on the basis of her working paper and requests the Special Rapporteur to submit a preliminary report to the Sub-Commission at its fiftieth session and a final report at its fifty-second session.

I. INFORMATION RECEIVED FROM GOVERNMENTS

Cuba

[18 November 1997]
[Original: Spanish]

1. Cuba condemns unequivocally all terrorist acts, methods and practices in all their forms and manifestations, regardless of where or by whom they have been committed, as well as State involvement in encouraging, supporting, funding, organizing or tolerating terrorist acts against other States.

2. We therefore support the United Nations efforts to combat terrorism and have advocated the convening of an international conference on this phenomenon to define it in all its forms and manifestations.

3. Without prejudice to the advisory opinion issued by the International Court of Justice on the basic concept of the violation of human rights in connection with Namibia in 1971, Cuba regards terrorism as a grave threat to the enjoyment of all human rights; the connection between the two questions lies firstly in the fact that terrorism denies the right to life, well-being and security.

4. For almost four decades, from 2 January 1959, when the first terrorist attack from Florida, United States of America, was aborted, up to recent acts, Cuba has been a victim of the most violent and varied terrorist practices involving flagrant violations of the human rights of the Cuban people and resulting in great loss of human life and property. These activities have been organized by foreign-based terrorist groups and carried out by mercenaries in opposition to the constitutional order of the Cuban State and society.

5. These activities have been directed against the person of the Head of State and other leading figures and against Cuba's economic and social development programmes, and have had damaging effects on the health, property and security of innocent persons.

6. Cuba has not only had to endure a sustained terrorist crusade launched from neighbouring territories, but has had to contend with propaganda campaigns mounted, often from outside, in the name of human rights, on behalf of persons tried and sentenced in Cuba for brutal crimes or for endangering the lives of the population.

7. This is illustrated by the recent events connected with terrorist activities in Cuba which are a matter of international knowledge and were reported in lavish detail at the time to the Special Rapporteur on mercenaries.

8. On 4 September 1997, explosions occurred in various hotels in the capital, causing material damage. One of them resulted in the death of an Italian national.

9. It is worth noting as background to this that, between April 1994 and September 1997, the special authorities responsible for internal security and order obtained information about more than 30 planned terrorist attacks against Cuba organized and prepared in Miami, in the United States, more than 15 of which involved the use of explosives of the type known as C-4. These operations were to be carried out by various extremist organizations and groups, including the group led by the terrorist Orlando Bosch, who was primarily responsible for the crime in Barbados in 1976, when a Cuban commercial airliner was blown up in mid-air, killing 73 persons.

10. With regard to the fight against terrorism as it relates to the full enjoyment of human rights, it should be emphasized that we recognize the importance of the two levels of State action - national and international. However, we believe that the international community should not apply a double standard in combating this evil.

11. There are at present States parties to a number of the principal relevant legal instruments in whose territory known terrorists are based and operate with complete impunity, planning attacks on targets outside those States' borders. In some cases, even the mass media are involved in reporting such terrorist activities.

12. Although the conclusion and implementation of international treaties is an important element in the fight against terrorism, their practical value is reduced by the above-mentioned factors.

13. On the domestic front, prevailing Cuban national legislation contains provisions for the punishment of acts of terrorism. Cuba's Penal Code (Act No. 62) defines terrorism and certain acts related to it, such as the spread of epidemics, contamination of water, sabotage, acts directed against heads of State and diplomatic representatives of States, mercenarism, adulteration of medicines, breaches of the rules on the use and conservation of radioactive substances, trafficking in and possession of narcotic drugs and other similar substances, and unlawful carrying and possession of weapons or explosives and lays down penalties commensurate with the gravity of such offences.

14. In this respect, Cuba complies fully with human rights standards, in particular the right to due process and the personal integrity of offenders, in accordance with its prevailing legislation.

15. One vital element of the fight against this phenomenon is that both the investigation of acts of terrorism and their prevention and punishment are non-delegatable powers and obligations of the State, the international dimension of which consists of cooperation between States in apprehending the perpetrators of such acts and employing every means to prevent terrorist activities against other States from being organized, encouraged, funded or tolerated within their territory.

II. INFORMATION RECEIVED FROM UNITED NATIONS BODIES

Department of Public Information

[30 October 1997]
[Original: English]

1. Despite renewed condemnations and appeals by the international community for an end to acts of terrorism perpetrated by terrorist groups around the world, an increasing number of innocent people, including women, children and older persons, are victims of such acts. As for all other human rights issues, the Department of Public Information is responsible for raising awareness of the issue of terrorism through many of its public information programmes. The Department carries out a multimedia approach to ensure the effective coverage of this issue as well as worldwide distribution of relevant public information materials on human rights. Various ongoing events such as the United Nations Decade for Human Rights Education (1995-2004) offer further opportunities to generate awareness and understanding of the issue of terrorism.

2. The Department continues to stress the issue of terrorism in the radio and television programmes which are produced regularly by the Department in a variety of languages. These are broadcast by national radio and television stations around the world. For instance, UN Radio has covered the issue of terrorism in its "UN News Brief" and "News Magazine" as well as in its 15- and 30-minute series "L'Afrique à l'ONU", "World in Review" and "UN in Action". Among the programmes were "International terrorism: global threat and global solutions"; "Secretary-General calls for global action to fight terrorism"; "What is terrorism? The answer is in the solution". They were produced in the six official languages, with some also adapted to Bangla, Indonesian and Urdu. These programmes were distributed to more than 1,700 broadcasting organizations worldwide.

3. Following are activities undertaken by some United Nations Information Centres and Services to raise awareness on efforts carried out by the United Nations regarding terrorism.

4. At the Sharm El-Sheikh Summit, the UNIC Cairo Information Officer arranged for the distribution to all delegates of files containing different United Nations resolutions on the elimination of terrorism and the Secretary-General's statement on terrorism, delivered in Mexico in March.

5. The UNIC Colombo Information Officer briefed law students at the University of Colombo on "United Nations involvement in combating global terrorism". The lecture was followed by an hour-long debate.

6. The Royal Nepalese Army organized a two-day seminar on international terrorism from 28 to 30 January 1997. UNIC Kathmandu provided information materials (resolutions, statements, articles) for the meeting.

7. UNIC Madrid and UNHCR jointly organized a briefing session for local NGOs to discuss human rights missions and the situation in Rwanda.

Crime Prevention and Criminal Justice Division

[1 October 1997]
[Original: English]

1. The Secretary-General established the Office for Drug Control and Crime Prevention as the focus for the integrated efforts of the United Nations in drug control, crime prevention and combating international terrorism in all its forms.

2. The Crime Prevention and Criminal Justice Division has developed a number of international and practical proposals of direct relevance to the issue of terrorism and of international cooperation in order to combat it. These include: the Model Treaty on Extradition (General Assembly resolution 45/116); the Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117); the Model Treaty on the Transfer of Proceedings in Criminal Matters (General Assembly resolution 45/118); and the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released (General Assembly resolution 45/119), all recommended by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, as well as the Model Agreement on the Transfer of Foreign Prisoners, adopted by the Seventh Congress.

3. On the recommendation of the Commission on Crime Prevention and Criminal Justice at its fifth session (1996), the General Assembly adopted the United Nations Declaration on Crime and Public Security (resolution 51/60), which emphasizes practical measures to strengthen public safety and stresses the need for Member States to protect the security and well-being of their citizens and other persons within their jurisdiction. Terrorism in all its forms and manifestations is considered to be among the most serious threats to human safety and the security of nations, requiring a global response.

4. The Division prepared a contribution entitled "The United Nations Prevention of Crime and New Information Technology" which is included by UNESCO in the book International Dimensions of Cyberspace Law published in December 1997. This text tackles the issues of "terrorism in the global village", the risk of the use of high technology to magnify the effects of terrorist attacks and the conventions and declarations adopted by the international community in the field of terrorism.

Office of the United Nations High Commissioner for Refugees

[7 October 1997]
[Original: English]

1. In its observations concerning terrorism, UNHCR shared the preoccupation of Governments with regard to international terrorism and the grave and unacceptable threat it poses to life and freedom. UNHCR is concerned to ensure that terrorists do not benefit from the international protection that is accorded to bona fide refugees, thus not permitting them either to escape retribution or to continue their activities from a safe haven.

2. It is also UNHCR's responsibility to uphold the rights of asylum seekers, and thus to ensure that State responses to terrorism do not erode established principles of international refugee law. The tendency among some States to indiscriminately associate terrorists with refugees is a simplistic linkage and risks being prejudicial to all refugees since it questions the legitimacy of the 1951 Convention relating to the Status of Refugees, as well as the institution of asylum as a whole, as prescribed by article 14 of the Universal Declaration of Human Rights.

3. In UNHCR's opinion, the legal framework of the Refugee Convention is entirely adequate to exclude terrorists from protection. For example, article 1F of the Refugee Convention enables States to ensure that asylum is not extended to perpetrators of violence and other inhuman acts such as genocide. With regard to terrorism in particular, article 1F(b) requires exclusion from refugee status of a "person with respect to whom there are serious reasons for considering that ... he [or she] has committed a serious non-political crime outside the country of refugee". Article 33 provides for expulsion and return of a refugee "whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country". Finally, article 2 stipulates that refugees have obligations to their country of asylum and are bound to conform to its laws and regulations. National laws concerning the prevention and punishment of terrorist acts apply to refugees as well as to citizens. Care must be taken to ensure the proper application of article 1F of the Refugee Convention. Due process of law as well as analysis of the facts in each particular case are critical ingredients to any refugee status determination. To activate the exclusion clause (1F), in relation to alleged terrorists, there will need to be conclusive evidence of direct participation in terrorist acts, through physical involvement, conspiracy or complicity.

III. INFORMATION RECEIVED FROM INTERGOVERNMENTAL ORGANIZATIONS

League of Arab States

[14 September 1997]
[Original: Arabic]

In the view of the League of Arab States, far from being limited to a specific part of the world, the dangerous consequences of terrorism will spread throughout the entire world unless there is international coordination and cooperation to combat this phenomenon, which unquestionably constitutes a flagrant violation of human rights. To this end, States should refrain from sheltering outlaws, prohibit any hostile activity against another State, cease interfering in the internal affairs of other States, respect their independence and sovereignty and take a resolute stand against Israel's violations in the occupied Arab territories where the most serious crimes or terrorism are being committed by the State of Israel, which is assassinating innocent persons, breaking the bones of children, murdering women, practising racial and religious discrimination, detaining thousands without charge or trial and permitting settlers to commit racist crimes of murder against unarmed Arabs. Resolute and forceful steps must be taken to combat this most dangerous form of terrorism, which is being practised against an entire people

comprising men, women, children and elderly persons who are facing blockade, torture and ill-treatment day and night. The League of Arab States trusts that the international community will take action to halt this flagrant violation of human rights.

IV. INFORMATION RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

Commission to Study the Organization of Peace

[12 August 1997]
[Original: English]

1. In its twenty-fifth report, 20 years ago, the Commission to Study the Organization of Peace considered the "new aspects of the international protection of human rights", thus supplementing its comprehensive 1968 report, "The United Nations and Human Rights". The 1997 report considered a variety of issues, most of which were taken up by the United Nations in the last 20 years. The United Nations did not follow the basic recommendation of the Commission that a Human Rights Council be created that would replace the Trusteeship Council and coordinate all human rights activities. It did, however, finally implement the related proposal for the establishment of a United Nations High Commissioner for Human Rights that "would act as intermediary between existing United Nations bodies, and be authorized to approach Governments directly to settle disputes and encourage ratification and implementation of human rights conventions".

2. In dealing with terrorism, the Commission expressed preference for a comprehensive convention that would deal with all terrorist attacks. It had to admit, however, that the United Nations had embarked instead on finding piecemeal solutions, and succeeded in preparing a number of conventions dealing with various terrorist crimes. One type of crime that the Commission did emphasize has not yet been taken care of, although it is the most international of all terrorist activities, namely, when a group of persons from country A commits an act of terrorism in country B against persons from country C, and then escapes to country D. Usually, these crimes are not limited to intended targets, but also incidentally kill or injure a number of innocent bystanders. No one is safe from the terrorist, no one can be protected in advance, either at home or abroad. The problem has been bypassed by the United Nations, and there is no general recognition of the existence of the new human right "to be free from the apprehension of and actual harm from terrorism". The Commission to Study the Organization of Peace thought that the United Nations "has an important role to play to protect civilians as well as government officials from international terrorist activity". It is not enough to protect heads of State, diplomats or persons working for international organizations. The Commission recognized the "effort required is great; yet it is desirable at least to begin to seek agreement on a small part of the problem, the innocent bystander". Some Governments have actually proposed that international law should concentrate on punishing severely terrorist acts committed in the territory of innocent bystander States, regardless of the nationality of victims. Nevertheless, international law emphasizes the nationality of the targeted victims, and does not usually grant special remedies to the innocent bystanders.

3. The Commission also emphasized the need for dealing more effectively with the political, social and economic factors which provoke terrorism, thus making terrorism less justifiable. It suggested that the United Nations should conduct a study of the means for peaceful social change as an alternative to terrorism.

International Association of Judges

[31 October 1997]
[Original: French]

1. The International Association of Judges, which represents judges belonging to 52 national associations of judges on five continents, expressed its support for resolution 1997/42 on human rights and terrorism. It also stated that judges were in the fore front in punishing acts of terrorism and many of them in various countries throughout the world had paid with their lives for their efforts to combat this type of criminal activity. The International Association of Judges is convinced that:

(a) In the fight against terrorism, the human rights of persons accused of acts of terrorism must be respected;

(b) Such persons must be tried by ordinary courts and not by special or military courts;

(c) The rule of law must also be observed in dealing with acts of terrorism, in both substantive and procedural law.

2. Nevertheless, the Association believes that the modus operandi of terrorists and the characteristics of criminal organizations which commit acts of terrorism are such that ordinary investigative and law enforcement measures are not effective. Consequently, to achieve positive results, it is necessary to adopt special measures (such as the protection of witnesses and judges, special treatment of accused who cooperate with the justice authorities, special prison regulations etc.).

3. International cooperation among police and judicial authorities is highly important and must be accorded priority, as disagreements between States give terrorists a real advantage. The extradition of terrorists in particular, is an essential instrument for the effective punishment of terrorism, although the right of asylum - which was rightly established for the protection of persons subject to political persecution - must not be used to obtain impunity for members of criminal gangs.

4. Furthermore, the fight against terrorism is not a task which can be entrusted solely to the justice system, as it is a problem which calls for the cooperation of all institutions, both political and social, of democratic States, together with an awareness and detachment on the part of the public in order to isolate terrorists and those aiding or abetting them.

Inter-Parliamentary Union

[20 August 1997]
[Original: English]

1. The Inter-Parliamentary Union (IPU) drew the attention of the Commission on Human Rights to chapter VII of the Final Document of the IInd Inter-Parliamentary Conference on Security and Cooperation in the Mediterranean, entitled "Fight against terrorism". Point 34 of this text states: "The Conference recalls that the struggle for national liberation and independence from foreign occupation is a legitimate right laid down in international resolutions and that this objective does not of itself constitute a terrorist act. The Conference stresses, however, that no struggle can justify indiscriminate attacks, particularly involving innocent civilians, or any form of organized State terrorism."

2. IPU enclosed a copy of the resolution adopted by its Council on 19 April 1996 on the occasion of the 95th Inter-Parliamentary Conference in Istanbul on "Fighting terrorism, an international phenomenon which threatens democracy and human rights as well as international peace and security and which hampers development; measures needed on the national and international levels to prevent acts of terrorism."